



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

September 17, 2002

Number: **200251007**
Release Date: 12/20/2002
UILC: 6402.01-03

GL-133061-02
CC:PA:APJP

INTERNAL REVENUE SERVICE NATIONAL OFFICE LEGAL ADVICE

MEMORANDUM FOR MICHAEL J. O'BRIEN
ASSOCIATE AREA COUNSEL (SB/SE)
CC:SB:6:OKL

FROM: John J. McGreevy
Senior Advisor
CC:PA:APJP

SUBJECT: Request for Legal Advice Regarding Injured Spouse Claims

This Chief Counsel Advice responds to your memorandum dated July 1, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

LEGEND

Taxpayer/Debtor =

Tax Year 1 =

Tax Year 2 =

Date 1 =

ISSUE

Whether the Service is bound by Taxpayer's allocations as submitted on Form 8379, Injured Spouse Claim and Allocation, when the allocations are not consistent with the guidelines for determining the amount of relief provided in Rev. Rul. 80-7, 1980-1 C.B. 296.

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CONCLUSION

If Taxpayer's allocations on Form 8379 are not consistent with the guidelines set forth in Rev. Rul. 80-7, the Service is not bound by them. Therefore, the amount of injured spouse relief should be determined in accordance with Rev. Rul. 80-7.

FACTS

Taxpayer (Debtor) filed a Chapter 13 bankruptcy petition, which was subsequently converted to a Chapter 7 liquidation proceeding. Thereafter, Debtor and her non-petitioning spouse filed joint Forms 1040 federal income tax returns for Tax Years 1 and 2, reflecting income tax refunds for both years. Although the Service attempted to obtain Debtor's agreement to offset her post-petition income tax refunds against her pre-petition income tax liabilities, Debtor did not agree to the offset. On Date 1, Debtor filed Forms 8379 requesting her portion of the refunds for Tax Years 1 and 2.

You have indicated that Debtor's allocations on the Forms 8379 are inconsistent with the information submitted on the joint Forms 1040 for those years, as well as the provisions of Rev. Rul. 80-7.

LAW AND ANALYSIS

Section 6402(a) of the Internal Revenue Code (Code) provides that in the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of the overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment, and shall refund any balance to such person.

Rev. Rul. 74-611, 1974-2 C.B. 399, provides that when a husband and wife file a joint return, each spouse has a separate interest in the jointly reported income and a separate interest in any overpayment.

Injured spouse relief applies when a couple files jointly and their tax refund is reduced or eliminated because of an unpaid tax liability or other debt that only one of them owes. The injured spouse has a right to his/her share of the refund, based on an allocation between the spouses of income, deductions, payments, and other tax return items. Accordingly, Rev. Rul. 80-7 provides that if spouses file a joint return showing an overpayment, the amount that may be credited to one spouse's separate liability is computed by subtracting that spouse's share of the joint liability from his/her contribution toward the joint liability. The amount credited may not exceed that of the joint overpayment.

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Section 21.4.6.4.11.1 of the Internal Revenue Manual (IRM) provides that items of income, deductions, and exemptions shall be allocated as determined by the taxpayer on Form 8379, or as reported on the original return to arrive at the taxable income for each spouse in accordance with Rev. Rul. 80-7.

Although the IRM states that the Service should compute the amount of injured spouse relief based on allocations submitted by Debtor, the provision makes reference to the guidelines for determining the amount of relief set forth in Rev. Rul. 80-7. Therefore, if Debtor's allocations on Forms 8379 are inconsistent with those guidelines, the Service is not bound by her allocations. Accordingly, Debtor's allocable share of the overpayments should be computed according to the method provided in Rev. Rul. 80-7.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If you have any further questions, please contact our office at (202) 622-4910.